

FAUQUIER COUNTY GOVERNMENT AND PUBLIC SCHOOLS

OPEN-END ARCHITECTURAL/ENGINEERING SERVICES CONTRACT #41-00C

FIRM: KELLERCO, Inc.

DISCIPLINE: Transportation Engineering and Consulting Services

This contract for engineering services is entered into by and between KELLERCO, Inc. (hereinafter called the "Firm") and the County of Fauquier, a political subdivision of the Commonwealth of Virginia, herein referred to as "Fauquier County."

WITNESSETH that the Firm and Fauquier County, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

1. SCOPE OF SERVICES:

The scope of services for projects assigned under this agreement will vary according to department/division requirements. Each project shall be negotiated separately. Where applicable, the Firm shall use terms and conditions and bidding instructions designated and/or prepared by the County for any documents prepared for purposes of bidding projects.

Transportation Planning, Engineering and Consulting Services may consist of, but is not limited to the following:

- **Comprehensive Plan.** Services related to a Comprehensive Plan, including completion of requested transportation studies, preparation of transportation plans for specific service districts, and participating with the County Staff team, and with established Citizen Planning Committees appointed by the Board of Supervisors. Preparation of comprehensive plan updates, which includes the Transportation Element, must proceed through 5 basic phases: 1) Goals, Objectives and Sketch Planning; 2) Conceptual Plan; 3) Final Plan; 4) Planning Commission Review & Action; and 5) Board of Supervisors Review and Action. Phases 1-3 include citizen committee work sessions, Phases 4-5 include public hearings and final document revisions subject to Planning Commission and Board of Supervisors directions.
- **Land Development Application Review for major rezoning applications.** This task includes: (1) establishing applicant study parameters, with VDOT, for Traffic Impact Analyses for major rezoning applications; (2) review of the Traffic Impact Analysis, concept development plan, and Proffer Statements submitted as part of the application and provision of analysis and recommendations in written report form to the Department of Community Development; and (3) provide transportation advice to the Board of Supervisors and Planning Commission at scheduled work sessions and public hearings, as required for specific cases. [Maximum number annually 3-4]
- Additional services as may be required/requested by The County or School Division.

The Firm may be required to work with other professional Architectural/Engineering Firms specified by Fauquier County, depending on the nature and scope of the project as mutually agreed between the two parties.

2. TERM OF CONTRACT

The contract term will commence April 1, 2000 and shall be for two years from that date. At Fauquier County's option, the contract may be extended for three (3) additional one (1) year periods. New Project Orders will not be issued after the expiration of the contract. The Firm shall continue performance of services until completion of work on all existing Project Orders issued prior to expiration of the contract. Fauquier County reserves the right to negotiate changes in services and to make modifications to Purchase Order fee amounts until completion of each Purchase Order.

The Fee Schedule, Exhibit A, may be adjusted at the end of the initial contract period of two (2) years (and at the end of each extension period, if applicable) upon mutual agreement of both parties. The adjustment to the fee schedule shall not exceed the percentage increase for the previous twelve (12) months in the Consumer Price Index, U.S. Cities average, all items, 1967 base, as adjusted, as published by the Bureau of Labor statistics, U.S. Department of Labor. Should this index be superseded, Fauquier County reserves the right to select another appropriate index.

Notwithstanding anything to the contrary as stated above, fees associated with Professional Liability Insurance requirements will be reviewed annually and, due to premium increases, adjustment to the Principal's hourly rate may occur as mutually agreed upon between the two parties.

3. GENERAL

- 3.1 Fauquier County's Reserved Rights: Fauquier County reserves the right, at its sole discretion, to issue Requests for Proposals for similar work and other projects as the need may occur. Fauquier County also reserves the right to issue Project Orders, and to expand or otherwise modify existing Project Orders, to other Open-End Firms based on its sole discretion, in consideration of its knowledge and/or evaluation of each Firm's qualifications, expertise, capabilities, performance record, current ability to perform, location and/or distance of the project, and any and all other factors as may be pertinent to the particular project and for the convenience of Fauquier County.
- 3.2 Requests For Fee Proposals: The Firm agrees to prepare fee proposals at the request of and at no cost to Fauquier County for the duration of this contract. Upon successful negotiation of a fee, Purchase Order(s) will be issued against this contract.
- 3.3 Hourly Rates: Hourly rates (including overhead and profit) for professional, other personnel, and reimbursable expenses indicated in Exhibit A shall be used to prepare Project Order fee proposals.
- 3.4 Verification of As-Built Drawings and Records: The Firm must not rely totally on information contained within as-built or record documents. The Firm must verify existing conditions at the site/within buildings (i.e., those accessible for verification) by on-site observation and investigation.
- 3.5 Ownership of Documents: Any reports, specifications, blueprints, negatives or other documents prepared by the Firm in the performance of its obligations under this contract shall be the exclusive property of Fauquier County and all such materials shall be returned to Fauquier County upon request. The Firm shall not use, willingly allow, or cause such materials to be used for any purpose other than performance of all Firms' obligations under this contract without the prior written consent of Fauquier County.

4. PROJECT ORDERS AND PROCEDURES FOR ORDERING SERVICES:

4.1 Types of Project Orders:

- 4.1.1 Lump Sum Fee Project Orders: Lump sum fees shall be negotiated individually for each project and issued as a separate Purchase Order
- 4.1.2 Hourly Rate Project Orders: When the scope of services involves work of such nature that the Firm cannot reasonably estimate the time which would be required to provide the services, the Using Department may authorize an Hourly Rate based on the actual hours worked times the hourly rates indicated in Exhibit A and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Firm shall submit detailed time records, documentation for other expenses, and such other evidence as the Using Department may require to support the Firm's billing request.

4.2 Procedures for Ordering Services

- 4.2.1 The Using Department will request a lump sum fee or hourly rate proposal for each Project from the Firm. At the Firm's expense, the Firm shall visit the site, as needed, and prepare a detailed proposal for accomplishing the services. The Firm shall determine feasibility of the proposed budget at this time. The Firm shall prepare a detailed lump sum or hourly rate (as applicable) fee proposal for accomplishing the services.
- 4.2.2 The Using Department will evaluate the Firm's fee proposal and may negotiate a suitable lump sum fee or a "not to exceed" amount with the Firm. Prompt completion of fee negotiations is imperative. Following successful negotiations, the Using Department will prepare a purchase order for the agreed scope of work and fee proposal, incorporating by reference the terms and conditions of this contract and forward to the Procurement Division. Once the Procurement Division has processed the purchase order (and assigned a number) the Using Department will authorize and instruct the Firm to proceed with the appropriate phase of the work. All purchase orders shall incorporate by reference the terms of this agreement.
- 4.3 The Firm shall not perform any work that has not been authorized by a written purchase order (or change order) executed by the Procurement Division. The Firm assumes all risk and financial liability for any services rendered without such proper authorization. Note: All school-funded projects must be approved by the School Division Comptroller and all project orders involving School Board property must be approved by the Superintendent of Schools.
- 4.4 Fauquier County reserves the right, at its sole discretion, to issue purchase orders to any Open-End firm based on its evaluation of each Firm's qualifications, expertise, capabilities, performance record, current workload, location or distance to the project and other factors as may be pertinent to a particular project.
- 4.5 Purchase Order Restriction/Maximum Fee Limitation: No individual purchase order fee shall exceed \$100,000, and the aggregate total of fees for all purchase orders issued to the Firm on behalf of Fauquier County shall not exceed \$250,000 in any fiscal year, without prior approval from the governing Board.
- 4.6 Change Orders: Change orders, authorized by the Procurement Division, may be issued to modify the scope of a Purchase Order. Change orders may add to, delete or otherwise modify the scope of services against a particular purchase order.

No modification can be made which will increase the original purchase order price by more than twenty-five percent (25%) or \$10,000, whichever is greater or exceed the purchase order limits established in 4.5 above, without the approval of the governing Board.

In making any modifications, the resulting increase or decrease in cost for the modification shall be determined by one of the following methods as selected by the Using Department.

- 4.6.1 The written modification shall stipulate the mutually agreeable fixed price for the specific addition to and/or deletion from the scope of work and/or specifications which shall be added to or deducted from the total contract amount.
- 4.6.2 The written modification shall direct the Firm to proceed with a specific scope of work and to keep, and present in a form as the Using Department may direct, a correct account of the actual man-hours by category and discipline and the time sheets therefor. The fee amount will be the man-hours expended multiplied by the hourly rates specified in Exhibit A. No additional increase for overhead and profit will be allowed. Changes using this procedure will usually specify a maximum amount.

5. PROJECT ORDER REFERENCES

All correspondence and documents (to include invoices) shall reference the contract number, applicable purchase order number and any project reference number the Using Department may identify as outlined in Section 4.

6. SUBMISSIONS

All project correspondence and documents prepared by the Firm shall be distributed to the Using Department and as otherwise may be directed during the period of this contract.

7. INVOICES FOR SERVICES

Submission of invoices for payments to the Firm shall be in accordance with the requirements set forth in the purchase order. Invoices shall be submitted to the Using Department requesting the services. Incomplete or improperly prepared invoices will be returned to the Firm without action. Fauquier County will not be responsible for payment of invoices where no authorized purchase order exists for said services.

8. PRESENTATIONS TO OWNER REPRESENTATIVES:

Upon request, the Firm will meet with County's representatives for the purpose of presenting project objectives, analysis and solutions. The presentation should include environmental concerns, advantages and/or disadvantages of design alternatives, legal issues and project costs as applicable. The objective of the presentation shall be to inform owner representatives about the project and to advise them of pertinent issues as required.

Costs of all requested or required meetings, presentations to the Using Department, its Board, the Review Board/Committee and other local agencies shall be included in the applicable Project Order and resulting purchase order.

9. CONSULTANTS

- 9.1 License: The Firm shall be duly and properly licensed in Virginia to provide the required professional services as required by Title 13.1 and Title 54.1 of the Code of Virginia. Should design work be required, the Engineer responsible for any design work shall be properly licensed in the Commonwealth of Virginia and shall apply the appropriate professional seal, date and signature to the documents for said discipline.
- 9.2 Firm Representatives: The Firm designates the Principal, indicated in Exhibit A, as its representative. The Principal shall have authority to act for the Firm and to negotiate Project Order fees. The Principal is Fauquier County's primary point of contact for all services performed under this contract and shall be available to Fauquier County's representatives for the purpose of coordinating activities, communications, and delivery of services. Replacement of the Principal shall be approved in writing by the Procurement Division, after proper notification as required in paragraph 9.3.
- 9.3 The Firm shall, during the period of this contract, make no substitutions of key personnel listed in the proposal response without prior notification to the Using Department. Notification shall provide the following information: explanation of circumstances necessitating the proposed substitution, complete resumes for proposed substitutes and any additional information that may be requested by the Using Department. Proposed substitutes shall have comparable qualifications to those of the person being replaced.
- 9.4 Subcontractors may not be used to perform any part of the scope of work unless authorized in writing by the Using Department. In the event the Firm desires to subcontract some part of the work specified herein, the Firm shall furnish the Owner names, qualifications and experience of their proposed consultants. The Firm, shall, however, remain fully liable and responsible for the work to be done by his consultants and shall assure compliance with all requirements of the contract. Subcontractor expenses shall be included in the applicable Project Order.
- 9.5 The Using Department reserves the right to reject Firm's personnel (or subcontractors) who, in the Using Department's judgment, are not adequately qualified to perform the work and to require the Firm to use replacement personnel (or subcontractors) who, in the Using Department's judgment are adequately qualified.

10. TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

- 10.1 Applicable Law and Courts: This agreement shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the courts resolved in the Circuit Court of Fauquier County, Virginia. The Firm shall comply with applicable federal, state and local laws and regulations.
- 10.2 Anti-Discrimination: By signing this agreement the Firm certifies to Fauquier County that they, as the contractor, will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans with Disabilities Act and Section 11-51 of the Virginia Public Procurement Act.

In every contract over \$10,000 the provisions in A and B below apply:

A. During the performance of this contract, the Firm agrees as follows:

1. The Firm will not discriminate against any employee or applicant for employment because of race, religion, color, handicap, sex or national origin, except where religion, sex or national origin is a bonafide occupational qualification reasonably necessary to the normal operation of the Firm. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Firm, in all solicitations or advertisements for employees placed by or on behalf of the Firm, will state that such Firm is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. The Firm will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- 10.3 Ethics in Public Contracting: The provisions contained in Sections 11-72 through 11-80 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, are incorporated herein by reference and shall be applicable to this contract.
- 10.4 Immigration Reform and Control Act of 1986: By signing this agreement, the Firm certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- 10.5 Debarment Status: The Firm certifies that they are not currently debarred from submitting bids or proposals on contracts by any agency of Fauquier County, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by any agency of Fauquier County.
- 10.6 Anti-trust: By entering into a contract, the Firm conveys, sells, assigns, and transfers to Fauquier County Government and Public Schools all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and the Fauquier County, relating to the particular goods or services purchased or acquired by Fauquier County Government and Public Schools under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.

10.7 Payment:

10.7.1 To Firm:

- A. Invoices for items ordered, delivered and accepted shall be submitted by the Firm directly to the payment address shown on the purchase order/contract. All invoices shall show the

contract number, purchase order number; and federal employer identification number. Detailed statements describing work accomplished shall accompany invoices submitted for payment.

- B. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
- C. All services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- D. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

10.7.2 To Subcontractors:

- A. A Firm awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the Firm's receipt of payment from the Fauquier County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify Fauquier County and the subcontractor(s), in writing, of the Firm's intention to withhold payment and the reason.
- B. The Firm is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the County, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be obligation of Fauquier County.

10.8 Assignment of Contract: A contract shall not be assignable by the Firm in whole or in part without the written consent of the Supervisor of Procurement.

10.9 Default: In case of failure to deliver goods or services in accordance with the contract terms and conditions, Fauquier County, after due oral or written notice, may procure them from other sources and hold the Firm responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which Fauquier County may have.

10.10 Disputes: Contractual claims, whether for money or other relief, shall be submitted in writing to the Superintendent of Schools (if the claim is against the Fauquier County School Board) or the County Administrator (if the claim is against the County of Fauquier) no later than sixty (60) days after final payment; however, written notice of the Consultant's intention to file such claim shall have been given at the time of the occurrence or beginning of the Work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made by the School Board (if the claim is against the Fauquier County School Board) or the County Board of Supervisors (if the claim is against the County of Fauquier) within sixty (60) days after submittal of the claim. The Consultant may not institute legal action prior to receipt of the School Board or Board of Supervisor's (whichever is applicable) decision on the claim unless the applicable party fails to render such decision within sixty (60) days. The decision of the School Board or Board of Supervisor's (as applicable) shall be final and conclusive unless the Consultant within six (6) months of the date of the

final decision on a claim, initiates legal action as provided in Section 11-70 of the Code of Virginia. Failure of the School Board or Board of Supervisors to render a decision within sixty (60) days shall not result in the Consultant being awarded the relief claimed nor shall it result in any other relief or penalty. Should the School Board or Board of Supervisors (as applicable) fail to render a decision within sixty (60) days after submittal of the claim, the Consultant may institute legal action within six (6) months after such 60-day period shall have expired, or the claim shall be deemed finally resolved. No administrative appeals procedure pursuant to Section 11-71 of the Code of Virginia has been established for contractual claims under this contract.

- 10.11 **Hold Harmless:** The Firm covenants to save harmless and indemnify the County and/or Public Schools against all actions and proceedings, costs, damages, expenses including attorney's fees, claims and demands whatsoever arising out of any work or services performed by the Firm, or any sub-contractor, employees or agents of the Firm.
- 10.12 **Taxes - Federal, State and Local:** The County of Fauquier and the Fauquier County School Board are exempt from federal excise tax and local taxes; such taxes shall not be included in the fee proposal or in invoices. Tax exemption certificates will be furnished if requested by the Firm.
- 10.13 **Audit:** The Firm agrees to retain all books, records and other documents relative to this contract for five (5) years after final payment, or until audited. The County, its authorized agents and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- 10.14 **Insurance:** By signing this agreement the Firm certifies it will have the insurance coverage specified in Exhibit B at the time the services commence. Additionally, the Firm certifies that it will maintain all required insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.
- During the period of the contract Fauquier County reserves the right to require the Firm to furnish the certificates of insurance for the coverage required to the Procurement Division.
- 10.15 **Termination:** Subject to the provisions below, the contract may be terminated by Fauquier County upon thirty (30) days advance written notice to the other party; but if services hereunder are in progress, but not completed as of the date of termination, then this contract may be extended upon written approval of Fauquier County and until said services are completed and accepted.
- 10.15.1 **Termination for Convenience:** In the event that the contract is terminated or canceled upon request and for the convenience of Fauquier County, without the required thirty (30) days advance notice, then Fauquier County shall be responsible for payment of services up to the termination date.
- 10.15.2 **Termination for Cause:** Termination by Fauquier County for cause, default or negligence on the part of the Firm shall be excluded from the foregoing provision; termination costs, if any shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
- 10.15.3 **Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled and, to the extent funds have been budgeted and appropriated, the Firm may be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the services delivered under the contract.
- 10.16 **Modification of Contract:** This agreement may not be modified or amended except by the written consent of the Firm and Fauquier County, made and given in the same manner and form as their original execution of this agreement.

10.17 Severability: In the event any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Fauquier County, a political subdivision of the
Commonwealth of Virginia

KELLERCO, Inc.

By: _____
Signature in Ink

Title: _____

Date: _____

By: _____
Janet B. Eisenberg, CPPO

Title: Supervisor of Procurement

Date: _____

EXHIBIT A FEE SCHEDULE

KELLERCO, Inc.
1 Cornwall Street, NW
Leesburg, VA 20176

Phone: (703) 779-0003
Fax: (703) 779-0177
email: kellerco@erols.com

Principal in Charge: C. Richard Keller

Effective April 15, 2000 – April 14, 2002

Classification	Hourly Rate
Principal	\$105.00
Associate	\$75.00
Senior Transportation Planner	\$65.00
Technical/Administrative Support	\$40.00
Travel	¢.27/mile
Reproduction	Reimbursed at cost

EXHIBIT B INSURANCE CHECKLIST REQUIREMENTS

Firm shall provide coverage for all Items marked "X" .

Required	Coverage Required	Limits (figures denotes minimum)
<u> X </u>	1. Worker's Compensation and Employers' Liability; Admitted in Virginia Employers' Liability All States Endorsement USL & H Endorsement Voluntary Compensation Endorsement Best's Guide Rating-A-VIII or better, or its equivalent	1. Statutory Limits of the Commonwealth of VA Yes \$100,000/\$500,000/\$100,000 Statutory Statutory
<u> X </u>	2. Commercial General Liability Products/Completed Operations Contractual Liability Personal Injury Independent Contractors XCU Prop. Damage Excl. Deleted Fire Legal Liability Best's Guide Rating-A-VIII or better, or its equivalent	2. \$500,000 Combined Single Limit Bodily Injury and Property Damage Each Occurrence \$50,000 Per Occurrence
<u> X </u>	3. Automobile Liability Owned, Hired, Borrowed & Non-owned Motor Carrier Act End. Best's Guide Rating-A-VIII or better, or its equivalent	3. \$500,000 Combined Single Limit Bodily Injury and Property Damage Each Occurrence
<u> X </u>	4. Prof. Errors and Omissions Best's Guide Rating-A-VIII or better, or its equivalent	4. \$1,000,000 Limit Each Occurrence
<u> </u>	5. Garage Liability	5. \$1,000,000 CSL Each Occurrence
<u> </u>	6. Garage Keeper's Legal Liability Best's Guide Rating-A-VIII or better, or its equivalent	6. a) Maximum Value of One Vehicle b) Maximum Value of All Vehicles Held by Contractor
<u> </u>	7. Umbrella Liability Best's Guide Rating-A-VIII or better, or its equivalent.	7. \$1,000,000
<u> </u>	8. Other Insurance:	
<u> X </u>	9. County and/or Schools named as additional insured on Auto and General Liability Policies. (This coverage is primary to all other coverages the County and Schools may possess and must be shown on the certificate.)	
<u> X </u>	10. 30 day written cancellation notice required, 15 day cancellation notice required for non-payment to Fauquier County and/or Schools – Ref. Code of Virginia Section 38.2-231. Also, the words "endeavor to" and "failure to mail such notice" clause shall be removed from the cancellation notice.	
<u> X </u>	11. The Certificate must state Bid/RFP No. and Bid/RFP Title.	
<u> X </u>	12. Contractor shall submit Certificate of Insurance within five business days from notification of award.	

Revised 11/98